APPENDIX A

[Filed Nov. 3, 1997]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 96-55895
D.C. No. CV-95-07052-AWT

TEAMSTERS BREWERY & SOFT DRINK WORKERS LOCAL UNION 896, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,
Plaintiff-Appellant,

vs.

ANHEUSER-BUSCH, INC.; ROBERT WARNER, a/k/a BOB WARNER,
Defendants-Appellees.

Appeal from the United States District Court
for the Central district of California
A. Andrew Hauk, District Judge, Presiding

Argued and Submitted October 6, 1997
Pasadena, California

ORDER *

Before: PREGERSON, D.W. NELSON, and HAWKINS, Circuit Judges.

We AFFIRM the District Court's grant of summary judgment to appellees.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R.36-3.

APPENDIX B

[Filed Dec. 23, 1997]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 96-55895
D.C. No. CV-95-07052-AWT

TEAMSTERS BREWERY & SOFT DRINK WORKERS LOCAL UNION 896, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,
Plaintiff-Appellant,

vs.

ANHEUSER-BUSCH, INC.; ROBERT WARNER, a/k/a BOB WARNER,
Defendants-Appellees.

ORDER

Before: PREGERSON, D.W. NELSON, and HAWKINS, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehearing the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX C

[Filed May 24, 1996]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 95 7052 AAH (Mcx)

TEAMSTERS BREWERY & SOFT DRINK WORKERS LOCAL 896, UNION,
Plaintiff,

v.

ANHEUSER-BUSCH, INCORPORATED, *et al.*
Defendants.

JUDGMENT

The Court, having granted the motion for summary judgment brought by Defendants Anheuser-Busch, Incorporated and Robert Warner (collectively "Defendants"), for the reasons set forth in its Decision, Findings of Fact, Conclusions of Law, and Order Granting Summary Judgment For Defendants, entered May 13, 1996, HEREBY ORDERS, ADJUDGES AND DECREES:

Judgment is entered in favor of Defendants and against Plaintiff. Defendants shall recover their costs of suit, in the amount of $_____.

DATED: May 24, 1996

/s/ A. Andrew Hauk
A. ANDREW HAUK
United States District Judge

SUBMITTED BY:

WILLIAM L. COLE
LAWRENCE A. MICHAELS
ADAM LEVIN
MITCHELL, SILBERBERG & KNUPP

By /s/ Lawrence A. Michaels
LAWRENCE A. MICHAELS

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By /s/ Eliot Lee Crossman, Esq.
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APPENDIX D

[Filed May 13, 1996]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 95-7052 AAH(Mcx)

TEAMSTERS BREWERY & SOFT DRINK WORKERS OF LOCAL UNION 896, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,
Plaintiffs,

v.

ANHEUSER-BUSCH, INC., ROBERT WARNER, aka BOB WARNER, and DOES 1-100, inclusive.
Defendants.

DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANTS

This action having been submitted to the Court, the Honorable A. Andrew Hauk presiding, upon the motion of Defendants, ANHEUSER-BUSCH and ROBERT WARNER, for summary judgment pursuant to Fed.R. Civ.P. 56; and the Court having considered the documents submitted in support and in opposition to the motion now makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. There is, and at all times has been, a collective bargaining agreement in effect between Defendant Anheuser-Busch and Plaintiff Teamsters Brewery & Soft Drink Workers Local 896 (the "Union").

2. On August 19, 1995, Anheuser-Busch conducted a search of the Company's "employee parking lots" at its Los Angeles brewery, looking for illegal drugs. The purpose of the search was to ascertain whether employees had brought drugs on to the premises in their vehicles or on their person.

3. To conduct this search, Anheuser-Busch hired a security company to walk through the employee parking lots with dogs trained to detect the smell of drugs in cars parked in the lot.

4. Where, based on the scent detected by these trained dogs, Anheuser-Busch suspected that an employee had brought drugs on to the Company's premises, the employee was asked to consent to a search of his or her person and his or her vehicle or they would be terminated immediately.

5. Union employees at the Los Angeles Brewery clock in and out of the brewery by inserting an electronic badge to pass through a "turnstile" between the brewery plant and the employee parking lot.

6. There is no physical obstruction which would prevent a person from leaving the brewery premises, or entering the employee parking lot, without passing through these turnstiles, but an employee is subject to discharge if he or she does leave in a way as to avoid these turnstiles. Guards are stationed in such a manner as to inform any employee attempting to avoid these turnstiles that they must go through the turnstiles or face termination.

7. The Union's claim of "false imprisonment" is based on the fact that employees were threatened with termination if they left the brewery premises without consenting to a vehicle search, or without clocking out by passing through the turnstiles.

8. While the above-referenced collective bargaining agreement does not have an express "management rights"

provision, the Union does recognize Anheuser-Busch's implicit right to adopt reasonable work rules which do not conflict with any provisions of the collective bargaining agreement.

9. Under work rules adopted by Anheuser-Busch, any Union employee who leaves plant premises during working hours is subject to discipline up to and including discharge, for "job abandonment."

10. Anheuser-Busch has a history of conducting certain types of work place searches—searches which the Union has acknowledged are permissible under the collective bargaining agreement.

11. Under the above-referenced collective bargaining agreement, any dispute related to interpreting or applying the collective bargaining agreement is subject to final and binding arbitration.

12. The Union did not breach its duty of fair representation to those employees on whose behalf the Union has brought this action.

13. The conduct of Robert Warner in connection with this drug search was simply to carry out a Company decision, over which Warner himself had no control and no authority.

CONCLUSIONS OF LAW

1. The claims of Plaintiff Union are preempted under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. The Union's claims are inextricably intertwined with the collective bargaining agreement between the Union and Anheuser-Busch, and require interpretation of that agreement for their resolution. *Stikes v. Chevron USA, Inc.*, 914 F.2d 1265 (9th Cir. 1990), *cert. denied*, 500 U.S. 917; *Schlacter-Jones v. General Telephone*, 936 F.2d 425, 441 (9th Cir. 1991); *Laws v. Calmat*, 852 F.2d 430, 433 (9th Cir. 1988).

2. The Union's claim for alleged violation of its members' right to privacy is preempted. *Stikes v. Chevron USA, Inc.*, 914 F.2d 1265 (9th Cir. 1990); *Schlacter-Jones v. General Telephone*, 936 F.2d 425, 441 (9th Cir. 1991); *Laws v. Calmat*, 852 F.2d 430, 433 (9th Cir. 1988).

3. The Union's claim for alleged false imprisonment of its members is also preempted. *Romero v. Hilton Hotels Corp.*, 137 LRRM 2647 (D.Ha. 1991); *Blanchard v. Simpson Plainwell Paper Co.*, 1995 U.S.Dist. LEXIS 5830 (W.D.Mich. 1995).

4. Accordingly, this action was properly removed to this Court, and this Court has jurisdiction over this action, pursuant to this Court's federal question jurisdiction, 28 U.S.C. §§ 1331, 1441(b), 29 U.S.C. § 185, in that the Union's claims are governed by Section 301 of the Labor Management Relations Act. Any attempt by the Union to plead a claim under state law must fail because the state law is preempted.

5. Because the Union's claims are preempted, Defendants are entitled to summary judgment on those claims. *Stikes v. Chevron USA, Inc.*, 914 F.2d 1265 (9th Cir. 1990); *Schlacter-Jones v. General Telephone*, 936 F.2d 435, 442 (9th Cir. 1991); *Utility Workers of America, Local No. 246 v. Southern California Edison Company*, 852 F.2d 1083 (9th Cir. 1983), *cert. denied*, 489 U.S. 1078 (1989).

6. Since state law is completely preempted, the only possible claim which the Union could assert is under the applicable collective bargaining agreement, pursuant to Section 301. Such a claim would necessarily fail, however, because as a matter of law, the exclusive remedy for any breach of the collective bargaining agreement is through final and binding arbitration. *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581, 80 S.Ct. 1347, 1352 4 L.Ed.2d 1409 (1960); *Utility*

Workers of America, Local No. 246 v. Southern California Edison Company, 852 F.2d 1083 (9th Cir. 1983), *cert. denied*, 489 U.S. 1078 (1989).

7. There is one exception to the rule that arbitration is the exclusive remedy for claims arising under the collective bargaining agreement which provides for arbitration. That exception arises if the union breaches its duty of fair representation. *Vaca v. Stipes*, 386 U.S. 171, 182, 87 S.Ct. 903, 912, 17 L.Ed.2d 842, 853 (1967); *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562-63, 567-72, 96 S.Ct. 1048, 47 L.Ed.2d 231 (1976). In this action, however, it is undisputed that the Union did not breach its duty of fair representation. Accordingly, Defendants are entitled to summary judgment based on the rule that arbitration is the exclusive remedy for the Union's claims. *Stevens v. Moore Business Forms, Inc.*, 18 F.3d 1443, 1444, 1447 (9th Cir. 1994).

8. The Union's claims against Defendant Robert Warner are preempted just as are the Union' claims against Defendant Anheuser-Busch. *Truex v. Garrett Freightlines, Inc.*, 784 F.2d 1347 (9th Cir. 1985). Warner is entitled to summary judgment for the same reasons Defendant Anheuser-Busch is entitled to summary judgment.

ORDER

Based on the aforesaid Findings of Fact and Conclusions of Law,

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date 5/13/96

/s/ A. Andrew Hauk
A. ANDREW HAUK
United States District Judge